

KOBAYASHI, SUGITA & GODA
Lex R. Smith (3485-1)
Thomas H. Yee (7344-0)
Suite 2600, First Hawaiian Center
999 Bishop Street
Honolulu, Hawaii 96813
Telephone: (808) 539-8700
Fax: (808) 539-8799

KIRKLAND & ELLIS LLP
Eric C. Liebler (CA Bar No. 149504)
Damian Capozzola (CA Bar No. 186412)
R. Olivia Samad (CA Bar No. 228611)
777 South Figueroa Street
Los Angeles, California 90017
Telephone: (213) 680-8400
Fax: (213) 680-8500

Attorneys for Defendant
POST-CONFIRMATION TRUST

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;	)	CIVIL NO. CV03-00385 SOM-LEK
	)	(Copyright)
)	
Plaintiff,	)	DECLARATION OF DAMIAN
	)	CAPOZZOLA IN SUPPORT OF
vs.	)	DEFENDANT PCT'S OPPOSITION
	)	TO WAYNE BERRY'S MOTION
HAWAIIAN EXPRESS SERVICE,	)	FOR PERMANENT INJUNCTION
INC., et al.,)	
	)	Judge: Hon. Susan O. Mollway
	)	Trial Date: January 24, 2006
Defendants.	)	Hearing Date: January 20, 2006
	)	Hearing Time: 2:00 p.m.

DECLARATION OF DAMIAN D. CAPOZZOLA IN SUPPORT OF
DEFENDANT PCT'S OPPOSITION TO WAYNE BERRY'S MOTION FOR
PRELIMINARY INJUNCTION

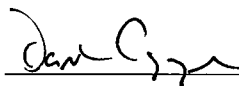
I, DAMIAN D. CAPOZZOLA, declare that:

1. I am an attorney at the law firm of KIRKLAND & ELLIS, LLP, attorneys for Defendant PCT and am duly authorized to make this affidavit.
2. I am licensed to practice law in the State of California and have been admitted pro hac vice in this case. I know the following to be true through my work in this case, and if requested could and would competently testify as such.
3. Attached hereto as Exhibit "A" is a true and correct copy of the Order Denying Post-Trial Motions, dated December 27, 2004.
4. Attached hereto as Exhibit "B" is a true and correct copy of the Order Denying Plaintiff's Motion for Leave to File Motion for Injunction Pending Appeal, dated March 4, 2005.
5. Attached hereto as Exhibit "C" are true and correct excerpts from the Order Denying Plaintiff's Motion for Temporary Restraining Order and Denying Without Prejudice Defendants' Request for Attorneys' Fees and Costs, dated July 25, 2003.
6. Attached hereto as Exhibit "D" are true and correct excerpts from the Order Denying Plaintiff Wayne Berry's Motion for Preliminary Injunction, dated October 8, 2004.
7. Attached hereto as Exhibit "E" is a true and correct copy of the Order Issued by the Ninth Circuit Court of Appeal, dated June 24, 2005.
8. Attached hereto as Exhibit "F" are true and correct excerpts from the Order Approving Asset Purchase Agreement By and Among Fleming and C&S Wholesale Grocers, et al., dated August 15, 2003.

9. Attached hereto as Exhibit "G" are true and correct excerpts from the Order Confirming the Third Amended and Revised Joint Plan of Reorganization of Fleming Companies and Its Filing Subsidiaries, dated July 26, 2004.

10. Attached hereto as Exhibit "H" are true and correct excerpts from the Protective Order issued by Discovery Master Matsui, dated April 12, 2005.

So sworn under penalty of perjury under the laws of the United States of America in Los Angeles, California, on January 12, 2006.

A handwritten signature in black ink, appearing to read "Dam Capozzola", is written over a horizontal line.

Damian D. Capozzola